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January 12, 1998

The Honorable Joel I. Klein
Assistant Attorney General
Department of Justice
Antitrust Division – Room 3109
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Klein:

I am writing with respect to actions initiated by SBC Communications to evade obligations and requirements pursuant to the Telecommunications Act of 1996 (P.L. 104-104) by means of litigation. I believe that as the December 31, 1997, decision in the U.S. District Court for the North District of Texas is appealed, the Department of Justice Antitrust Division should take a closer look at allegations of antitrust abuse and monopoly power within SBC's local telephone market.

To my view, the SBC lawsuit itself is ample evidence of the company's clear intent to use every legal and regulatory device at its disposal to maintain its monopoly position. The lawsuit also represents the manifestation of SBC's bad faith by reneging on commitments made to the U.S. Congress and American consumers.

Thus far, the Federal Communications Commission (FCC) process of considering requests from Regional Bell Operating Companies (RBOCs) for long distance relief has worked as Congress intended it to work: applications that did not meet the criteria established in the Act have been rejected. Indeed, in the very few instances that any RBOC has applied to enter the long distance marketplace within a State, the FCC has denied each one because the Commission found that the companies failed to demonstrate they had sufficiently opened their markets to competition and fulfill the requirements of the law. As you well know, the filings with the FCC from the Department of Justice on these applications have advocated such denials. Moreover, Commission decisions on these matters have not even been close calls – each application to the FCC has been unanimously rejected.

During deliberations on the Telecommunications Act, the RBOCs agreed to demonstrate that their local phone markets were sufficiently open for competition prior to receiving authorization to enter the long distance business. This new policy, embodied in Section 271 of the Act, was put in place in exchange for Congress relieving the RBOCs from the flat prohibition against long distance entry contained in the Modified Final Judgment (MFJ) which broke up the AT&T monopoly. In other words, fulfillment of the so-called "checklist" obligations in Section 271 was inextricably linked with supersession of the MFJ contained in Section 601(a)(1). There was a *quid pro quo*.

Under provisions of the Communications Act, allegations of antitrust abuse by SBC can be addressed through enforcement investigations by the FCC as well as vetted through use of the new "Section 271

process" established by enactment of the Telecommunications Act of 1996. If SBC desires to invalidate Section 271, and thereby not adhere to its half of the deal struck with Congress and American consumers, underlying FCC enforcement provisions and antitrust statutes remain in effect notwithstanding such invalidation. These remedies can and must be exercised by the Government to further the intent of Congress to break down the local telephone monopoly from coast to coast.

In addition to requesting that the Department step up its investigations into allegations of monopoly abuse by SBC, I want to further suggest that the Department explore the possibility of reinstating the MFJ in the event that SBC's litigation strategy to skirt the law is upheld. Although I believe that there is little likelihood that SBC's "bill of attainder" decision will withstand appeal, it is important to note that Congress would not have superseded the MFJ if Sections 271-5 had not been enacted to replace such judicial oversight. If the SBC decision is ultimately upheld, then I believe it is incumbent upon the Department to take action and move to reinstate the MFJ in light of the extraordinary circumstance that the unforeseen invalidation of Sections 271-5 represented.

If you have any questions regarding this letter, please do not hesitate to call me or have your staff contact Colin Crowell in my office at (202) 225-2836. Thank you in advance for your time and attention in considering the above requests.

